UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MARTHA KINARD, Regional Director
of the Sixteenth Region of the
National Labor Relations Board,
for and on behalf of the
NATIONAL LABOR RELATIONS BOARD

Petitioner

v. **Civil Action No. 4:16-cv-00952**

DISH NETWORK COMPANY

Respondent

RESPONSE TO RESPONDENT'S MOTION TO SUPPLEMENT THE RECORD

To the Honorable Judge Reed O'Connor of the United States District Court for the Northern District of Texas, Fort Worth Division:

On January 5, 2017, Respondent filed a motion to supplement the record to include documents from dismissed NLRA Charge No. 16-CA-117693 (Document 49). Petitioner opposed that motion because the proposed exhibits are irrelevant to this proceeding.

The merits of the current dispute have already been fully addressed in the administrative hearing. Respondent repeatedly made its point with respect to the dismissed charge during that hearing. The addition of evidence that Petitioner relied on in making the determination in March 2014 to dismiss that charge –four affidavits, bargaining notes, and various correspondence – serves only to burden the already voluminous record without affecting the "reasonable cause" prong of the Section 10(j) inquiry. Neither does this evidence reflect anything further on the issue of whether Respondent's conduct was sufficiently egregious.

With respect to the dismissal letters and the Comment on Appeal that Petitioner directed to the NLRB's General Counsel on March 19, 2014, those documents are irrelevant to the "just and proper" prong for two reasons. First, it is evidence of an earlier point in negotiations (when there were, in fact, negotiations), and second, Petitioner chose to dismiss these allegations because no employees had been impacted by anything said during those negotiations. Petitioner could not have known then that Respondent would actually implement a wage proposal that would make its North Richland Hills and Farmers Branch employees the lowest paid employees in the area, that Respondent would provide direct evidence that it preferred its employees quit, or that Respondent would refuse to meet and bargain with its bargaining partner before doing so.

Furthermore, these documents advance none of the points, which Respondent ascribes to them. As discussed in that Comment on Appeal, Charge 16-CA-117963 was dismissed because the parties were still meeting to bargain, the parties were still agreeing to various proposals, Respondent had not declared impasse and Respondent had not implemented its offer.

Section 8(a)(3) and 8(a)(4) of the NLRA require an adverse employment action. At the time of dismissal, Respondent had not actually reduced pay and so those allegations were summarily dismissed. For a statement to be unlawful under Section 8(a)(1) of the Act, it must be relayed to a statutory employee and because Mr. Basara's comments were made to Union representatives and not Respondent's employees, that allegation was dismissed. These dismissals do not preclude Basara's comments from being used as evidence of unlawful motivation. The dismissals simply stand for the principle that evidence of unlawful motivation is not in and of itself a violation.

Petitioner does not lightly charge employers with bad faith bargaining allegations under Section 8(a)(5) of the NLRA. Industrial peace favors resolution of differences primarily by the

parties themselves. In early 2014, Petitioner evaluated the bargaining of the parties as a whole and determined that where the parties were moving in their positions and willing to meet and bargain it was not appropriate for Petitioner to interject itself into the dispute on the basis of Basara's statement alone. At the time, Basara's statement was evidence only of the motivation behind *an offer*; the statement is now evidence of the motivation behind *an action* that caused nineteen employees to lose their jobs. Moreover, at the time of the Complaint in this matter, unlike in 2014, Respondent was unwilling to meet with the employees' bargaining representative and had not met the employees' bargaining representative in sixteen months. Thus, the circumstances are widely different.

Because Respondent's proposed exhibits only act to burden the record without adding relevant information, Petitioner opposed their introduction.

DATED at Fort Worth, Texas, this 9th day of January 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed a copy of the above and that the Court's Electronic Filing System will provide notice of this filing to counsel of record for all parties.

/s Becky Mata

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